

ESTTA Tracking number: **ESTTA38113**

Filing date: **07/08/2005**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

<b>Proceeding</b>	91123805
<b>Party</b>	Defendant RKO CENTURY WARNER THEATRES, INC. ,
<b>Correspondence Address</b>	BRUCE A. TASSAN TASSAN LAW FIRM 4143 NORTH 27TH STREET ARLINGTON, VA 22207-5211
<b>Submission</b>	Motion to Institute Concurrent Use Proceeding
<b>Filer's Name</b>	Maria v. Hardison
<b>Filer's e-mail</b>	maria@tassan.com
<b>Signature</b>	/maria v hardison/
<b>Date</b>	07/08/2005
<b>Attachments</b>	RKOPictures.pdf ( 3 pages )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

RKO PICTURES, INC.,	)	
	)	
Opposer,	)	
	)	Opposition No. 91123805
v.	)	Serial No. 75/386,638
	)	Mark: RKO CENTURY WARNER
	)	THEATRES
RKO CENTURY WARNER THEATRES, INC.,	)	
	)	
Applicant.	)	

**MOTION TO INSTITUTE CONCURRENT USE PROCEEDING**

Applicant has requested a motion to strike the above noted opposition on the basis that it should not have been instituted since it involves concurrent use parties. The Interlocutory attorney has suspended its decision on the motion pending the outcome of Opposition Proceeding Nos. 91120565 and 91125220. Applicant wishes to advise the attorney that Opposition No. 91120565 has been terminated.

Applicant requests that the instant opposition proceeding be suspended pending the institution of a concurrent use proceeding requested by Applicant in its application. Since Opposer is the only party whose opposition to Application No. 75/386,638 has not been resolved and is the named exception to Applicant's claim of exclusive use, it is appropriate at this time to suspend this opposition proceeding pending institution of the concurrent use proceeding at which time the opposition should be dismissed without prejudice.

Opposer would not be prejudiced by the institution of the concurrent use proceeding. In a concurrent use proceeding, Applicant will have the burden to establish facts which would show that there is no likelihood of confusion arising from its concurrent use of a similar mark

to that of Opposer in their respective geographic areas. Additionally, Opposer will have the chance to establish that Applicant is not a lawful concurrent user and, therefore, is not entitled to the concurrent use registration sought. *Inland Oil & Transport Co. v. IOT Corp.*, 197 USPQ 562, 564 (TTAB 1977).

Finally, the Board is reminded that "concurrent rights are considered and determined by the Board only in the context of a concurrent use proceeding." TBMP § 1101.02. Even if the opposition is resolved in Applicant's favor, the Board and the parties would then have to devote time and resources to a somewhat duplicative concurrent use proceeding. In this regard, concurrent use proceedings, even with an agreement by the parties, take the Board approximately three years to "rubber stamp."

Accordingly, Applicant requests that a concurrent use proceeding be instituted and the above opposition proceeding be dismissed.

Respectfully submitted,

Date: June 13, 2005

By:   
Maria v. Hardison  
Attorney for Applicant  
Tassan & Hardison  
4143 North 27<sup>th</sup> Street  
Arlington, Virginia 22207-5211  
(703) 522-4583  
(703) 522-5306 Fax  
E-mail: maria@tassan.com

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing document was mailed, first-class, postage prepaid,  
this 15<sup>th</sup> day of June 2005, to:

Jane Shay Wald, Esq.  
Irell & Manella  
1800 Avenue of the Stars  
Suite 900  
Los Angeles, California 90067

Konrad Gatien, Esq.  
Keats McFarland & Wilson, LLP  
9270 Wilshire Boulevard  
Penthouse Suite  
Beverly Hills, California 90212

  
Maria v. Hardison